THE HONOURABLE SRI JUSTICE N.V.RAMANA

Writ Petition No.11722 of 2006

Dated: 21-12-2006

Between:

Burela Venugopal Rao.

…..PETITIONER

AND

Andhra Pradesh State Road Transport Corporation,
Rep by its Vice Chairman & Managing Director,
Musheerabad, Hyderabad and others.

….RESPONDENTS

THE HONOURABLE SRI JUSTICE N.V.RAMANA

W.P.No.11722 of 2006

ORDER:

Assailing the proceedings dated 8-7-2005 of the 3rd respondent, as confirmed by the 2nd and 1st respondents vide their proceedings dated
13-9-2005 and 22-4-2006 respectively, the petitioner filed the present writ petition.

The facts of the case in brief are as follows:

The petitioner is a Stenographer in A.P.S.R.T.C. While he was working as Personal Assistant to the 3rd respondent, namely the Regional Manager, Hyderabad City, Hyderabad, the 3rd respondent issued him charge-sheeted dated 09.10.2004 and placed him under suspension. The petitioner submitted his explanation to the charges. However, dis-satisfied with the explanation, an enquiry was conducted. The Enquiry Officer having conducted the enquiry, submitted his report. Based on the enquiry report, the 3rd respondent issued notice dated 06.06.2005 to the petitioner calling upon him to show cause as to why he should not be removed from service. Assailing the said show cause notice, the petitioner filed writ petition in W.P.No.12777/2005, which by order dated 22.06.2005, was dismissed by this Court, directing the petitioner to submit his explanation to the show cause notice. Aggrieved thereby, the petitioner filed writ appeal in W.A. No. 1251 of 2005, and a Division Bench of this Court by judgment dated 06.07.2005, dismissed the same, granting two weeks

time to the petitioner to submit his explanation. Aggrieved thereby, the petitioner filed appeal, but the 2nd respondent by orders dated 13.09.2005 dismissed the same. The review petition filed by the petitioner was also dismissed by the 1st respondent by orders dated 22.04.2006, confirming the orders of the 3rd respondent, as confirmed by the 2nd respondent in appeal.

The learned counsel for the petitioner submitted that the writ appeal filed by the petitioner assailing the order of the learned single Judge in the writ petition was dismissed by the Division Bench vide judgment dated 06.07.2005, granting two weeks time to the petitioner to submit his explanation, and even before expiry of the two weeks period and even before the petitioner could submit his explanation to show cause notice in terms of the judgment of the Division Bench of this Court, the

3rd respondent passed the impugned order dated 08.07.2005 removing him from service, and though the petitioner brought to the notice of the

2nd respondent as also the 1st respondent in appeal and review that the 3rd respondent passed the order of removal without giving him opportunity to submit his explanation, yet the 2nd and 1st respondents, without considering the said fact, confirmed the order of removal in appeal and review. Since no opportunity was given to the petitioner to submit his explanation to the show cause notice, the learned counsel for the petitioner submits that the order of removal dated 08.07.2005 passed by the 3rd respondent, as confirmed by the 2nd respondent in appeal vide orders dated 13.09.2005 and the 1st respondent in review vide orders dated 22.04.2006, is liable to be set aside, and prayed that the impugned order be set aside and the writ petition be allowed.

On the other hand, the learned Standing Counsel appearing on behalf of the respondents contended that the petitioner in terms of the judgment of the Division Bench submitted his explanation on 18.07.2005, and even before the petitioner submitted his explanation, the 3rd respondent passed the impugned order of removal on 08.07.2005. He submitted that the petitioner, immediately after dismissal of the writ appeal, did not bring to the notice of the 3rd

respondent that he was granted two weeks time to submit his explanation to the show cause notice. Had he brought the said fact to the notice of the 3rd respondent, the 3rd respondent would not have passed the order of removal immediately. He submitted that the petitioner submitted explanation to the show cause notice, without enclosing the copy of the judgment in the writ appeal, and in such circumstances, the appeal as well as the review petition, filed by the petitioner against the orders of the 3rd respondent, were dismissed by the 2nd and 1st respondents.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents Corporation.

Assailing the show cause notice of removal dated 06.06.2005, the petitioner filed writ petition in W.P. No. 12777 of 2005, and the same by orders dated 22.06.2005 was dismissed by this Court. Assailing the said order, the petitioner filed appeal in W.A. No. 1251 of 2005, and a Division Bench of this Court vide judgment dated 06.07.2005, while dismissing the writ appeal, granted two weeks time to the petitioner to submit his explanation to the show cause notice. Immediately, two days after the dismissal of the writ appeal, the 3rd respondent on 08.07.2005, passed the order of removal.

Admittedly, the Division Bench of this Court granted two weeks time to the petitioner to submit his explanation, and even before expiry of the said period and even before he could submit his explanation, the 3rd respondent passed the impugned order. Though the petitioner is said to have agitated before the 2nd and 1st respondents that the 3rd respondent passed the impugned order even before he could submit his explanation, as is evident from the fact that he submitted his explanation on 18.07.2005, the fact remains, both the 2nd respondent as well as the 1st respondent did not bother to look into the same, and they merely confirmed the order of the 3rd respondent.

Since the Division Bench passed the order in the writ appeal in the presence of the Standing Counsel for the respondents, the respondents cannot contend that they are not aware of the factum of the Division Bench granting two weeks time to the petitioner to submit

his explanation and that the petitioner did not submit his explanation supported by the order of the Division Bench, and more so by the date the petitioner submitted his explanation on 18.07.2005, the 3rd respondent had already passed the order of removal.

Since the 3rd respondent passed the order of removal dated 08.07.2005, even before the petitioner could submit his explanation, as directed by the Division Bench of this Court, and passed the same without the explanation of the petitioner to the show cause notice, the same, as confirmed by the 2nd respondent in appeal and the 1st respondent in review petition, cannot be sustained and is liable to be set aside, for in its passing, the 3rd respondent has violated the principles of natural justice.

In the result, the writ petition is allowed. The orders dated 08.07.2005, passed by the 3rd respondent, as confirmed by the 2nd respondent in appeal vide orders dated 13.09.2005 and the 1st respondent in review petition vide orders dated 22.04.2006, are set aside. The 3rd respondent, however, is at liberty to pass appropriate speaking orders after considering the explanation dated 18.07.2005 submitted by the petitioner to the show cause notice, as directed by the Division Bench of this Court, in accordance with law. No costs.

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(N.V. RAMANA, J.)

Date:21-12-2006.

grk/tvk

THE HONOURABLE SRI JUSTICE N.V.RAMANA

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